Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review –	)	CC Docket No. 98-94
Testing New Technology	)	
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BELLSOUTH COMMENTS

BellSouth Corporation, on behalf of its affiliated companies (collectively "BellSouth"), hereby submits these Comments in response to the Commission's *Notice of Inquiry* in the above referenced proceeding.

In its *Notice*, the Commission solicits comment on the effects of existing Title II regulations on experiments involving advanced telecommunications technology conducted by firms subject to those regulations. The Commission observes that a number of current regulations present undesirable disincentives for carriers who otherwise want to conduct technical or market trials of potential new services or technologies. These disincentives, in turn, stifle or delay the commercial introduction of innovative services. Thus, the Commission seeks comment on how it might modify its regulatory scheme to eliminate these disincentives and thereby foster carriers' introduction of advanced technologies and services. In these Comments, BellSouth supports the Commission's initiative generally, but suggests that without concomitant revisions to regulations governing the actual commercial introduction of the relevant services, modifications limited to carriers' trial activities will have little bearing on the incentives of carriers to bring innovative services to market.

The Commission properly observes that the state of regulation generally reflects established technology. While breakthroughs in technology may eventually force modifications in regulatory structures, the time lost while regulators play catch-up serves only to deprive the public of the benefits of new technologies and services. The Commission is therefore on target with its objective of modifying or eliminating regulations that inhibit the rapid introduction of such technologies and services.

An unfortunate aspect of the Commission's instant initiative, however, is that it is too narrowly focused and too short-sighted. In particular, by emphasizing that the proposals in the *Notice* are not intended to alter existing rules for the permanent authorization of new services or technologies,[1] the Commission appears to have assumed wrongly that the facilitation of trials and technology experiments will have a material effect on the pace at which new services are introduced. Without appropriate incentives and opportunities in place for the actual introduction of new services, however, flexible trial rules will have little bearing on carriers' decisions or abilities to pursue services based on new technologies.

The Commission's mere belief that "the opportunity to conduct market trials creates proper incentives to promote technology development and testing"[2] is insufficient. The promotion of technology development and testing through relaxed regulation of those activities is not an appropriate end unto itself. The incentive structure must be such that affected carriers have the promise of opportunity to reap the rewards of their innovation in the actual commercial introduction of services based on the new

[1] Notice at ¶ 9.

[2] Notice at ¶ 8.

technology. Only through coupling the modification of rules governing trials with the modification of rules governing service introduction will the Commission create the appropriate framework to support its obligations under Sections 7[3] and 706[4] of the Act[5] to promote the rapid introduction of advanced technologies and services to the American public.

To that end, BellSouth encourages the Commission to conduct this proceeding in deliberate conjunction with the required notice of inquiry proceeding pursuant to section 706. Indeed, the stage has already been set for that proceeding by a recent petition for the issuance of the appropriate notice filed by the Alliance of Public Technology (APT).[6] As BellSouth explained in its comments supporting the goals of that petition,[7] APT correctly identified numerous specific areas in which the Commission's current rules and policies sacrifice long term incentives for investment in infrastructure and advanced technology development in favor of dubious efforts to jump-start retail competition through unreasonable and unsustainable advantages for new entrants in local exchange markets. Only through elimination of the artificial barriers to the *offering* of advanced services and technologies will the American public realize the benefits attainable through such

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[3] 47 U.S.C. § 157.

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 706 (1996).

[5] The Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et sec.*

[6] Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the Telecommunications Act, File No. CCB/CPD 98-15, Public Notice, DA 98-496 (rel. Mar. 12, 1998).

[7] Comments of BellSouth, File No. CCB/CPD 98-15 (filed Apr. 13, 1998).

offerings; mere relaxation of the rules under which carriers can *test* new offerings will have comparatively little beneficial effect.

Properly viewed as a necessary adjunct to the Commission's Section 706 inquiry, however, there are several ways in which the Commission's current regulation of carriers' market or technical trials should be modified to eliminate regulatory disincentives to such activities. In particular, the Commission should eliminate any regulatory process that presents itself as a tool for competitors to misuse in anticompetitive fashion as a means to delay the progression of the intended trial.[8] Accordingly, BellSouth supports the suggestion in the *Notice*[9] that trials, whether technical or market, should not be subject to pre-approval by the Commission at all.[10]

BellSouth also urges the Commission to avoid the apparent temptation simply to replace one form of regulation of trials with another. Thus, BellSouth cautions the Commission not to attempt to establish arbitrary size or duration limitations for trials.[11] The nature of trials will vary depending on a number of factors, such as the technology involved or the objective of the trial. Requiring trials to conform to arbitrary criteria will interfere with carriers' flexibility to design and administer trials in the manner in which they can derive the most benefit. The alternative of seeking a waiver from any specified

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[8] The most egregious example of such abuses of process occurring in recent times was the efforts of competitors to block several BOCs from conducting trials of video dialtone services. Indeed, the arduous process of obtaining the requisite approvals lasted longer than the trials themselves.

[9] Notice at ¶ 13.

[10] Of course, such a proposal would not be appropriate under the existing Part 5 regimen because the Commission must guard against electrical interference to the existing operations of licensed carriers by experimental licensees. *See* 47 C.F.R. § 5.15(a)(2).

[11] Notice at ¶ 21.

limiting criterion would merely be a return to a process of pre-approval, subject to opportunities for competitive delay.

The Commission also should modify its proposal to require termination of a trial before a carrier receives permanent authorization for an associated service offering.[12] Although customers rightly should be informed that any trial in which they participate, whether technical or market, *may* not become available as a permanent offering, there is no reason to deprive participating customers of the utility of the experimental undertaking while appropriate permanent authorizations are obtained. Rather, the Commission's permanent authorization processes should accommodate concurrent analysis of the proposed service offering with continued provision of the trialed offering. Only if the Commission ultimately denies any requisite authorization for the trialed service should the customer suffer the inconvenience of service disruption or termination.

Finally, BellSouth urges the Commission not to rely heavily on its past experience with enhanced service market trial approvals[13] as a model for trial authorizations in the future.[14] Although the presumption of approval following 90 days' notice of the intended trial to the Commission avoids many of the opportunities for abusive procedural delays by competitors noted above, the substantive regulatory requirements for an enhanced service market trial are not materially different from the requirements that would attach to an actual enhanced service introduction. As a result, there is relatively little incentive to pursue market trials for new enhanced service offerings. The Commission should

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[12] Notice at ¶ 21.

[13] *BOC Notices of Compliance with CEI Waiver Requirements for Market Trials of Enhanced Services*, 4 FCC Rcd 1266 (1989).

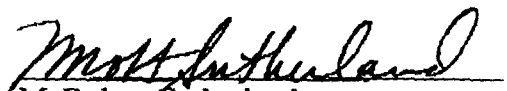
[14] Notice at ¶¶ 18-19.

avoid perpetuating similarly weak incentives for advanced technology trials by ensuring that any requirements adopted for trials do not merely replicate the substantive requirements for full service authorizations.

CONCLUSION

BellSouth supports the Commission's general initiative in this proceeding to eliminate regulatory disincentives to testing of advanced technologies and services, but urges the Commission to recognize that the real incentives for innovation and deployment of advanced infrastructure and technology lie in the opportunity to earn the rewards from such innovation. Accordingly, the Commission should consider its goals in this proceeding to be but a subset of the Commission's fulfillment of its obligations under Section 706. Finally, in pursuing relaxed regulation of market and technical trials, the Commission should not merely substitute one form of regulation for another.

Respectfully submitted,
BELLSOUTH CORPORATION

By: 

M. Robert Sutherland
A. Kirven Gilbert III
Its Attorneys
1155 Peachtree Street, N.E.
Suite 1700
Atlanta, Georgia 30309
(404) 249-3388

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